FBO LEASE AGREEMENT YELLOWSTONE AIRPORT

THIS AGREEMENT is made effective XXXXXXXXXX, by and between the DEPARTMENT OF TRANSPORTATION, AERONAUTICS DIVISION, hereinafter referred to as "DIVISION" and XXXXXXXXXX, dba XXXXXXXXXX, hereinafter referred to as "XXXXXXXXXX". All parties recognize that the DIVISION will only be able to keep the airport operational and the terminal building open during the season when weather conditions permit and that this season customarily approximates one hundred twenty (120) consecutive days each year, which will generally be the months of June, July, August, and September of each year.

WITNESSETH:

WHEREAS, DIVISION now owns, controls, and operates the Yellowstone Airport, hereinafter referred to as "Airport", located in Gallatin County, State of Montana;

WHEREAS, fixed base operation services are essential to the proper accommodation of general and commercial aviation at the airport; and

WHEREAS, DIVISION deems it advantageous to itself and to its operation of the Airport to Lease unto XXXXXXXXXX certain premises and to grant unto XXXXXXXXXX certain rights, privileges and uses therein, as necessary to conduct its fixed base operation as hereinafter set forth.

NOW THEREFORE, for and in consideration of these premises and the mutual promises and covenants of the parties hereto, it is agreed as follows:

ARTICLE I

TERM

The term of this agreement shall be for a period of ten (10) years, commencing on XXXXXXXXXX, and ending on XXXXXXXXXX, unless earlier terminated under the provisions of this agreement. The DIVISION conditionally extends to XXXXXXXXXX an option to be exercised in writing at least sixty (60) days but not more than one hundred eighty (180) days prior to the end of this lease to renew this lease for another five year period. The right of XXXXXXXXXX to exercise such option shall be conditional upon the satisfactory performance by it during the term of this Lease Agreement as determined by the DIVISION. Both parties shall have the option to negotiate changes in this lease if XXXXXXXXXX exercises its option to renew.

ARTICLE II

LEASED PREMISES

The DIVISION Leases to XXXXXXXXXX and XXXXXXXXX leases from the DIVISION on a year-round basis, solely for the conduct of XXXXXXXXXX'S business as a fixed base operator at the Airport the following terminal space and real property.

B. Fuel storage area: Below ground fuel storage area comprising approximately 10,000 square feet, set forth, described and located on Exhibit "A 2" attached hereto and made a part hereof. XXXXXXXXXX shall have the right of first refusal to lease the adjacent 10,000 square feet of real property for purposes deemed acceptable to DIVISION.

ARTICLE III

RIGHTS AND OBLIGATIONS OF LESSEE

- A. <u>REQUIRED SERVICES</u>: XXXXXXXXXX is hereby granted the non-exclusive privilege to engage in and XXXXXXXXXX agrees to engage in the business of providing the following services:
- 1. XXXXXXXXX shall maintain a bulk underground fuel storage installation upon the leased premises, which shall be adequate for the purposes herein described, and in accordance with the approval of DIVISION.
- 2. XXXXXXXXX shall provide ground guidance within the area designated as "Aircraft Ramp" in exhibit "A 3" including sale and into plane delivery of aviation fuels, lubricants and other aviation related products.
- 3. XXXXXXXXXX shall maintain an adequate supply of aviation fuel and lubricants in the storage tanks and facilities located at the Airport to meet the reasonable demands for aviation fuels, lubricants and aviation related products.
- B. <u>AUTHORIZED SERVICES</u>: In addition to the services required to be provided by XXXXXXXXXX as described hereinabove, XXXXXXXXXX is authorized, but not required, to provide the following services and to engage in the following activities:
 - 1. Ramp service at the Terminal or other Airport

locations including loading and unloading of passengers, baggage, mail and freight; and providing of ramp equipment, aircraft cleaning and other services for air carriers and other persons or firms.

- 2. Special flight services, including aerial sightseeing, aerial advertising, and aerial photography.
 - 3. The sale of new and used aircraft.
 - 4. Flight training, including ground school.
 - 5. Aircraft rental.
- 6. Aircraft charter operations, conducted by XXXXXXXXXX or a subcontractor of XXXXXXXXXX.
- 7. Customary accommodations for the convenience of users, including informational services, direct telephone service connections to the Flight Service Station and U.S. Weather Bureau.
- 8. Repair and maintenance of based and transient aircraft.
- 9. Sales of avionics and engine parts and instruments and accessories.
- C. OPERATING STANDARDS: In providing any of the required and/or authorized services or activities specified in this agreement, XXXXXXXXXX shall operate for the use and benefit of the public and shall meet or exceed the following standards:
- 1. XXXXXXXXXX shall furnish service on a fair, reasonable and non-discriminatory basis to all users of the Airport. XXXXXXXXX shall furnish good, prompt and efficient service adequate to meet all reasonable demands for its services at the Airport. XXXXXXXXX shall charge fair, reasonable and

non-discriminatory prices for each unit of sale or service provided, however, that XXXXXXXXXX may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

- 2. XXXXXXXXX shall provide, at its sole expense, a sufficient number of employees to provide effectively and efficiently the services required or authorized in this Agreement.
- 3. XXXXXXXXXX shall control the conduct, demeanor and appearance of its employees, who shall be trained by XXXXXXXXX and who shall possess such technical qualifications and hold such certificates of qualification as may be required in carrying out assigned duties. It shall be the responsibility of XXXXXXXXXX to maintain close supervision over its employees to assure a high standard of service to customers of XXXXXXXXXX as well as the public in general.
- 4. XXXXXXXXXX shall meet all expenses and payments in connection with the use of the premises and the rights and privileges herein granted, including taxes, permit fees, license fees, registrations, and assessments lawfully levied or assessed upon the premises or property at any time situated therein and thereon. XXXXXXXXXX may, however, at its sole expense and cost, contest any tax, fee or assessment as provided by Montana law.
- 5. XXXXXXXXX shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business contemplated, including rules and regulations promulgated by DIVISION and XXXXXXXXXX shall keep in effect and post in a prominent place all necessary and/or required licenses

or permits.

- 6. XXXXXXXXXX shall keep and maintain the leased premises in good condition and order, and shall surrender the same upon the expiration of this Agreement, in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by XXXXXXXXXX 'S negligence excepted.
- 7. All tank trucks, automotive equipment, machinery, appliances and other vehicles and equipment used by XXXXXXXXXX in its operations required and/or authorized by this Agreement shall, at its sole cost and expense, be maintained in good mechanical condition and appearance, neat and clean, inside and out, and shall be up-to-date equipment, which shall, at all times, meet all requirements necessary or lawfully required for the prevention of fire and safety of operations, considering the nature of business engaged in.

It is expressly understood and agreed that, in providing required and authorized services pursuant to this Agreement, XXXXXXXXX shall have the right to choose, in its sole discretion, its vendors and suppliers.

8. XXXXXXXXX shall maintain leak free all storage tanks, plumbing, and facilities associated with the storage of XXXXXXXXXX 'S petroleum products, chemicals, or other products located on the premises of the Yellowstone Airport and, additionally, comply with all federal and state laws and regulations pertaining to the storage of such products; and XXXXXXXXXX shall be responsible in complying with clean-up requirements of the federal and state governments in event of

leakage of spills of such products as well as assuming the cost associated with such clean-up.

- D. <u>SIGNS</u>: XXXXXXXXXX shall not erect, construct or place any signs or advertisements pertaining to its business upon any portion of the Airport, other than upon the underground fuel storage site, except as otherwise provided. Prior to the erection, construction or placing of any signs or advertising matter upon the underground fuel storage sit or other points designated by the Airport by the DIVISION, XXXXXXXXXX shall submit to the DIVISION for its approval, in writing, such drawings, sketches, designs, dimensions, type and character of advertising matter and proposed location. Notwithstanding any other provision of this Agreement, said sign(s) shall remain the property of XXXXXXXXXXX. XXXXXXXXXXX shall remove, at its expense, all lettering, signs and placards so erected on the Airport at the expiration of the term of this Agreement.
- E. NON EXCLUSIVE RIGHT: It is not the intent of this
 Agreement to grant to XXXXXXXXXX the exclusive right to provide
 any or all of the services described in this article at any time
 during the term of this Agreement. DIVISION reserves the right,
 at its sole discretion, to grant others certain rights and
 privileges upon the airport which are identical in part or in
 whole to those granted to XXXXXXXXXXX. However, DIVISION does
 covenant and agree that:
- It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the airport;
 - 2. Any other operator of aeronautical endeavors or

activities will not be permitted to operate on the airport under rates, terms or conditions which are more favorable than those set forth in this Agreement;

3. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease and operating agreement.

ARTICLE IV

APPURTENANT PRIVILEGES

- A. <u>USE OF AIRPORT FACILITIES</u>: In connection with this agreement, XXXXXXXXXX shall have full access, together with its employees and invitees, its sub-lessees and their employees, without charge, to and from the leased premises, and to and from all public spaces and facilities on the airport including the use of landing areas, runways, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by the DIVISION.
- B. MAINTENANCE OF AIRPORT FACILITIES: DIVISION shall properly maintain and operate the Terminal Building for the safe, convenient and proper use thereof by XXXXXXXXXX, and will provide adequate electricity, heat and water for the public space and XXXXXXXXXX 'S leased space in the Terminal building. DIVISION shall also maintain all public and common or joint use areas of the Airport, including the Air Operations areas, in good repair, and shall make such repairs, replacements or additions thereto as, in its opinion, are required and necessary for the safe and efficient operation of the Airport.
- C. $\underline{\text{NON-COMPETITION}}$: DIVISION shall not engage directly or indirectly in any of the activities described in Paragraphs A & B of ARTICLE III of this agreement.

ARTICLE V

LEASEHOLD IMPROVEMENTS

- A. TERMINAL BUILDING LEASEHOLD: XXXXXXXXXX, subject to the DIVISION'S written approval, may install, erect or place in, on or about its leased space in the Terminal Building any improvements which XXXXXXXXXX considers appropriate to the operation of its business.
- B. <u>FUEL STORAGE LEASEHOLD</u>: XXXXXXXXXX, subject to the DIVISION'S written approval, may install, or place in or on its leased fuel storage space those improvements or alterations subject to the conditions authorized herein. All such alterations shall be specifically limited to such uses necessary to the legal storage or dispensing of aviation fuels or lubricants.
- C. OTHER DESIRED IMPROVEMENTS: In the event XXXXXXXXX desires to erect improvements in an area not leased in this Agreement, such required additional leasehold may be leased by amendment to this Agreement if such an amendment is mutually agreeable and desirable to both parties.

No improvements, alterations or additions shall be made by XXXXXXXXXX upon or in said leased premises without first obtaining the written approval of the Administrator of the DIVISION. All installations, improvements or alterations made as herein provided shall be installed at the sole cost and expense of XXXXXXXXXX and XXXXXXXXXX shall promptly pay all costs and expenses connected herewith and keep said premises free and clear of liens for labor and material and hold the DIVISION harmless from any claim therefrom. All improvements, alterations and

additions, including the plans and specifications therefore, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the State of Montana, the State Aeronautics DIVISION and such other authority as may have jurisdiction thereover. The Administrator's approval given, as provided herein, shall not constitute a representation or warranty as to such conformity, which shall remain the responsibility of XXXXXXXXXX and such improvements shall remain the personality of XXXXXXXXXXX.

At any time while this Agreement is in effect, and for thirty (30) days thereafter, XXXXXXXXXX will have the right to remove, and upon the request by the DIVISION shall remove, any and all improvements from the airport. XXXXXXXXXX will, upon such removal, restore the premises to their original condition and will repair any damages resulting from such removal. Title to any improvements not so removed by XXXXXXXXXX will vest in the DIVISION.

ARTICLE VI

PAYMENTS

- A. <u>RENT & FEES</u>: In consideration of the rights and privileges granted by this Agreement, XXXXXXXXXX agrees to pay to DIVISION during the term of this Agreement the following:
- 1. RENT: A rental of \$xxxx (\$xxxx/square foot) per annum for the Terminal Space and a rental of \$xxxx (\$.xxxx/square foot) per annum for the Fuel Storage Area.
- 2. <u>FEES</u>: XXXXXXXXXX shall collect a fuel flowage fee and pay to the DIVISION the amount per gallon set by the DIVISION from time to time for all aviation fuels sold by XXXXXXXXX at

retail, including fuels used by XXXXXXXXXX in its own operations, except that no fee shall be paid for aviation fuel purchased by a certificated air carrier whose lease with the DIVISION does not provide for such a fee. XXXXXXXXXX will also collect all tiedown fees and charges according to schedules that shall be set by the DIVISION from time to time and submitted to XXXXXXXXXX, and XXXXXXXXXX shall pay to the DIVISION fifty percent (50%) of all such fees and charges.

B. PAYMENTS:

- 1. The rental payments specified in Paragraph A.1 above are in four (4) equal monthly installments for terminal rent and rental of the fuel storage area on or before the tenth (10th) day of July, August, September, and October commencing on XXXXXXXXXXX.
- 2. The fees specified in Paragraph A.2 above shall be paid to the DIVISION on or before the tenth (10th) day of July, August, September, and October, commencing on XXXXXXXXXX.

 XXXXXXXXXX shall keep true and accurate records which shall show the total gallonage of aviation fuels used and tiedown fees collected. With the payment of the charges specified in this paragraph, XXXXXXXXX shall submit a report of gallonage and tiedown fees which shall be in such detail as may be required by the DIVISION.
- C. <u>LANDING FEES</u>: XXXXXXXXXX shall collect landing fees from aircraft using the airport in accordance with a schedule of landing fees established by DIVISION. Fees so collected shall be reported and paid monthly to DIVISION, less a ten percent (xx%) handling charge to be retained by XXXXXXXXXX at the same time as

the fees paid to DIVISION pursuant to Paragraphs A.2 and B.2.

- D. RENEGOTIATION OF RENT AND FEES: The rent and fees specified in Paragraphs A.1 above shall be renegotiated during the first five (5) months of each two (2) year period of this agreement, the increases or decreases in the rent and fees resulting from such renegotiation to be effective as of June 1 following the negotiations. It is understood and agreed that (1) no increase in such rental of fees shall exceed xxxx percent (xx%) of the rental or fees then being paid by XXXXXXXXXX hereunder, and (2) no such increases shall be required if XXXXXXXXXX is prohibited by law or regulation from passing such increase on to its customers.
- E. RECORDS: In addition to records and reports required by Paragraph B.2 above, XXXXXXXXXX shall provide and maintain accurate records of retail fuel sales and adjusted gross receipts derived under this agreement, and tiedown fees collected, for a period of three (3) years form the date the record is made. The DIVISION or its duly authorized representative shall have the right at all reasonable times during business hours to audit the books, records, and receipts of XXXXXXXXXX, and to verify XXXXXXXXXX 'S fuel sales and adjusted gross receipts and tiedown fees collected.
- F. <u>DISPUTES</u>: In the event that any dispute may arise as to fuel sales or landing or parking fees collected, the amount claimed due by the DIVISION shall be paid forthwith and the dispute shall be submitted to a certified public accountant, agreeable to both parties, who shall determine the rights of the parties hereunder to conformity with generally accepted

accounting principles. The fees due said accountant for such service shall be paid by the unsuccessful party, or in the event the determination is partially in favor of each party, the fee shall be borne equally by the parties.

ARTICLE VII

<u>UTILITIES</u>

Except for utilities furnished in the Terminal Building by the DIVISION, XXXXXXXXXX shall assume and pay for all costs or charges for utility services furnished to XXXXXXXXXX during the term of this agreement.

ARTICLE VIII

INSURANCE

- A. REQUIRED INSURANCE: XXXXXXXXXX shall obtain and maintain continuously in effect at all times during the term of this Agreement, at XXXXXXXXXX 'S sole expense, public liability and property damage insurance with limits of not less than XXXXXXXXXX Dollars (\$XXXXXXXXXX) for injury to or death of any one person, subject to a limitation of not less than XXXXXXXXXX Dollars (\$XXXXXXXXXX) for all persons injured or killed in the same accident and with limits of not less than XXXXXXXXXX Dollars (\$XXXXXXXXXX) for damage to and destruction of property as the result of any injury or damage caused by XXXXXXXXXX 'S negligence in its operations under this Lease.
- B. <u>NOTICE</u>: DIVISION agrees to notify XXXXXXXXX in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which DIVISION has knowledge, and to cooperate with XXXXXXXXXX in the investigation thereof.

ARTICLE IX

INDEMNIFICATION

XXXXXXXXX will indemnify and hold the Division harmless form any loss, liability or expense for injury to or death to any person, or loss or destruction of any property caused by XXXXXXXXXX 'S negligent use or occupancy of the Leased Premises, except a loss, liability or expense caused by the negligence or willful misconduct of the DIVISION, its agents or employees.

ARTICLE X

LESSEE AS INDEPENDENT CONTRACTOR

In conducting its business hereunder, XXXXXXXXX acts as an independent contractor and not as an agent of DIVISION. The selection, retention, assignment, direction and payment of XXXXXXXXXX 'S employees shall be the sole responsibility of XXXXXXXXXX.

ARTICLE XI

ASSIGNMENT

XXXXXXXXX shall not, in any manner, directly or indirectly, assign, transfer or encumber this lease and concession agreement or any portion thereof, or interest therein, or sublet or sublease the whole or any part of the premises or facilities let

to it, nor license the use of same, in whole or in part, by any other person, firm or corporation, without the written consent of the DIVISION; provided that the foregoing shall not prevent the assignment of this lease and concession agreement to any corporation with which XXXXXXXXXX may merge or consolidate, or which may succeed to the business of XXXXXXXXXX, and which resultant or succeeding corporation shall continue the operation of the business authorized under the concession granted herein at the Airport.

This Lease and concession agreement shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of the parties hereto. The term " XXXXXXXXXX " shall include any assignee or sublessee from " XXXXXXXXXX " under any assignment or subletting permitted and approved by the DIVISION, but no such assignment or subletting shall be permitted or approved, or shall have any effect until XXXXXXXXXX and its assignees or sublessee agree in writing with XXXXXXXXXX that XXXXXXXXXX and its assignee or sublessee shall thereafter be jointly bound as is XXXXXXXXXX hereunder.

ARTICLE XII

NON-DISCRIMINATION

XXXXXXXXX, its agents and employees shall not discriminate against any person or class of persons by reason of race, color, creed or national origin in providing any services or in the use of any of its facilities provided for the public, in any manner prohibited by Part 15 of the Federal Aviation Regulations.

XXXXXXXXX further agrees to comply with such enforcement procedures as the United States might demand that the DIVISION

take in order to comply with the Sponsor's Assurances.

ARTICLE XIII

REQUIREMENTS OF THE UNITED STATES

This Agreement will be subordinate to the provisions of any existing or future agreement (1) between the DIVISION and the United states relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport; and (2) between the DIVISION and the United States National Park Service or Forest Service. The DIVISION agrees to advise XXXXXXXXXX of any future changes in agreements between the DIVISION and agencies of the U.S. Government.

ARTICLE XIV

DEFAULT AND TERMINATION

- A. <u>TERMINATION BY LESSEE</u>: This agreement shall be subject to termination by XXXXXXXXXX in the event of any one or more of the following events:
- 1. The abandonment of the airport as an airport or airfield for any type, class or category of aircraft.
- 2. The default by DIVISION in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of DIVISION to remedy or undertake to remedy, to XXXXXXXXXX 'S satisfaction, such default within a period of thirty (30) days after receipt of written notice from XXXXXXXXXX to remedy same.
- 3. Damage to or destruction of all or a material part of the premises or airport facilities necessary to the operation

of XXXXXXXXXX 'S business.

- 4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the airport, or any substantial parts thereof, in such a manner to restrict XXXXXXXXXX from conducting business operations for a period in excess of ninety (90) days.
- B. <u>TERMINATION BY LESSOR</u>: This Agreement shall be subject to termination by DIVISION in the event any one or more of the following events:
- 1. The default by XXXXXXXXXX in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of XXXXXXXXXX to remedy, or undertake to remedy, to DIVISION'S satisfaction, such default within a period of thirty (30) days after receipt of written notice from DIVISION to remedy same.
- 2. XXXXXXXXX files a voluntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of XXXXXXXXXX and such receivership is not vacated within thirty (30) days after the appointment of such a receiver.
- 3. Montana legislative action which would cause the DIVISION to abandon, close, return to the United States, or otherwise discontinue operating the airport.
- C. <u>EXERCISE</u>: Exercise of the rights of termination set forth in Paragraphs A and B above, shall be by notice to the other party within thirty (30) days following the vent giving rise to the termination.

D. REMOVAL OF PROPERTY: Upon termination of this

Agreement for any reason, XXXXXXXXXX, at its sole expense, shall remove from the premises all signs, trade fixtures, furnishings, personal property, equipment and materials which XXXXXXXXX was permitted to install or maintain under the rights granted herein. If XXXXXXXXXX shall fail to do so within thirty (30) days, then DIVISION may effect such removal or restoration at XXXXXXXXXX 'S expense, and XXXXXXXXXX agrees to pay DIVISION such expense promptly upon receipt of a proper invoice therefor.

E. CAUSES OF BREACH; WAIVER:

- 1. Neither party shall be held to be in breach of this agreement because of any failure to perform any of its obligations hereunder if said failure is due to any cause for which it is not responsible and over which it has not control; provided, however, that the foregoing provision shall not apply to failures by XXXXXXXXXX to pay fees, rents, or other charges to DIVISION.
- 2. The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.
- F. PAYMENT FOR LEASEHOLD IMPROVEMENTS: In the event of any cancellation or termination of this Agreement, for any cause other than a breach or default by XXXXXXXXXX, DIVISION shall, within sixty (60) days of the date of such termination or cancellation, pay to XXXXXXXXXX, for all of the permanent

ARTICLE XV

MISCELLANEOUS PROVISIONS

- A. <u>ENTIRE AGREEMENT</u>: This agreement constitutes the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.
- B. <u>SEVERABILITY</u>: If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

LESSOR:

BY	 	
Director		
Date	-	

DEPARTMENT OF TRANSPORTATION

LESSEE:	
Date	_

[PCCOMMON.AERONAUT] FBOAGREEMENT.YELLOWSTONE